Court of Justice of the European Union
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Press and Information

Judgment in Case C-336/14
Sebat Ince

EU law may preclude the imposition of penalties in respect of the unauthorised cross-border intermediation of sporting bets carried out in Germany

This is particularly the case in so far as the former public monopoly, which has been held by the German courts to be contrary to EU law, has persisted in practice

Before the Amtsgericht Sonthofen (Local Court, Sonthofen, Germany), the German public prosecution authorities have charged Ms Sebat Ince with intermediating, without the requisite administrative authorisation, sporting bets by means of a betting machine installed in a sports bar located in Bavaria. The Austrian company for which those bets were collected was licensed to organise sporting bets solely in Austria, and not in Germany.

The charges brought against Ms Ince concern, first of all, the first half of 2012, a period in which the organisation and intermediation of sporting bets were restricted, in Germany, to a public monopoly pursuant to the rules of the **2008 State Treaty on gaming**.[1] Those rules prohibited the unauthorised organisation and intermediation of sporting bets and excluded the granting of such authorisations to private operators. Following the judgments of the Court of Justice in the cases of *Stoß and Others* and *Carmen Media Group,*[2] all of the German courts called upon to determine whether the monopoly in question was in conformity with EU law concluded, according to the Amtsgericht Sonthofen, that that was not the case. However, those courts disagree as to the consequences to be drawn from the unlawful nature of the monopoly. Some of those courts are, in particular, unsure whether a **fictitious authorisation procedure** ought to be applied to private operators, by examining on a case-by-case basis whether they satisfy the conditions applicable to public operators. According to the Amtsgericht Sonthofen, no private operator has obtained authorisation following such an authorisation procedure.

The charges brought against Ms Ince also relate to the second half of 2012, a period in which the organisation and intermediation of sporting bets were governed by the **2012 amending Treaty on gaming**.[3] That treaty contains an **experimental clause** under which private operators may obtain, for a period of seven years from the entry into force of that treaty, a licence to organise sporting bets. Once the licence has been awarded, the intermediaries of the organiser may obtain an authorisation to collect bets on its behalf. The obligation to hold a licence applies to public organisers that are already operational and to intermediaries only one year after the first licences have been granted. However, at the time of the material facts (and up to the date of the hearing before the Court on 10 June 2015), none of the 20 available licences had been issued, with the result that no private operator was authorised to organise or collect sporting bets in Germany. From this the Amtsgericht Sonthofen concludes that the former public monopoly, which has been held by the German courts to be contrary to EU law, has persisted in practice.

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[1] Staatsvertrag zum Glücksspielwesen concluded between the German Länder, in force from 1 January 2008 to 31 December 2011. However, the rules of that treaty continued to apply in all of the Länder (with the exception of the Land of Schleswig-Holstein) until the entry into force of a new treaty.

[2] C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07 Stoß and Others and C-46/08 Carmen Media Group, see also Press Release No. 78/10. In those judgments, the Court held that the German courts could legitimately be led to take the view that that monopoly did not pursue the objective of combating the dangers associated with gambling in a consistent and systematic manner.

[3] Glücksspieländerungsstaatsvertrag concluded between the Länder, which entered into force in Bavaria on 1 July 2012.

In this context, the Amtsgericht asks the Court what consequences are to be drawn by the administrative and judicial authorities, first, from the incompatibility of the former public monopoly regime with EU law during the period in which the reform was being prepared and, second, from the continuation of that monopoly in practice following the 2012 reform.

With regard to the period governed by the rules of the 2008 State Treaty on gaming, the Court answers in today's judgment **that, in the case where the obligation to hold an authorisation** to organise or intermediate sporting bets **forms part of a public monopoly** regime which has been held by the national courts to be **contrary to EU law, the freedom to provide services precludes the criminal prosecution authorities** of a Member State **from penalising the unauthorised intermediation of sporting bets** by a private operator on behalf of another private operator lacking an authorisation to organise sporting bets in that Member State but merely holding a licence in another Member State.

Even where a private operator may, in theory, obtain an authorisation to organise or intermediate sporting bets, the freedom to provide services **precludes** such a penalty **in so far as** knowledge of the procedure for the granting of such an authorisation is not guaranteed and the public monopoly regime with regard to sporting bets, held by the national courts to be contrary to EU law, has persisted notwithstanding the adoption of such a procedure. The Court notes in this respect that **the fictitious authorisation procedure has not remedied the fact that the public monopoly is incompatible** with EU law, as has been found by the national courts.

In addition, the fact that, by virtue solely of a law of the Land of Bavaria, the rules of the 2008 State Treaty on gaming were, despite the expiry of that treaty at the end of 2011, still applicable in Bavaria in the first half of 2012 has the consequence that certain technical regulations contained in that treaty may not be enforced during that period against individuals such as Ms Ince. Unlike the treaty itself, that law[4] was never notified to the Commission. However, an EU directive[5] requires such a notification for any draft version of a law containing technical rules concerning an 'Information Society service'. That notification obligation applies not only to the treaty but also to the legislation which maintains it in force at regional level. It will be for the Amtsgericht Sonthofen to establish whether Ms Ince is alleged to have infringed technical regulations laid down by the 2008 State Treaty on gaming (such as the prohibition of offering games of chance on the internet, the restrictions placed on offering sporting bets via telemedia services or the prohibition of broadcasting advertising for games of chance on the internet or via telecommunications equipment).

As regards the period governed by the 2012 amending Treaty on gaming, the Court answers that the freedom to provide services precludes a Member State from penalising the unauthorised intermediation of sporting bets on its territory on behalf of an operator holding a licence to organise sporting bets in another Member State:

- **where** the issue of an authorisation to organise sporting bets is subject to the obtaining of a licence by the operator in accordance with a procedure such as that at issue in the main proceedings, if the Amtsgericht Sonthofen finds that that procedure does not observe the principles of equal treatment and non-discrimination on grounds of nationality and the consequent obligation of transparency, **and**
- **to the extent that**, despite the entry into force of a national provision permitting the granting of licences to private operators, **the application of the provisions establishing a public monopoly regime** with regard to the organisation and intermediation of sporting bets, held **by the national courts to be contrary to EU law, has persisted in practice**.

The Court notes in this regard that **the experimental clause has not remedied** the former public monopoly's **incompatibility** with the freedom to provide services in so far as, regard being had to

[4] Likewise the corresponding laws of the other Länder.

[5] Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18).

the fact that no licence has been granted and that public operators may continue to organise sporting bets, the former regime has continued to apply in practice despite the entry into force of the 2012 reform.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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